

REMARKS

By this amendment, claims 1-30 have been amended. New claims 56-58 have been added, and no claims have been canceled. Claim 55 remains unamended and original. Hence, claims 1-30 and 55-58 remain currently pending.

1. **Response to Claim Rejections under 35 U.S.C. § 112**

Claim 9 is rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are on lines 2-3 wherein the claim recites, “the patient encounters an additional that creates another episode of care” omitting what additional element it is that the patient encounters.

In response to this rejection, claim 9 has been amended to recited that the patient encounters an additional condition that creates another episode of care, in accordance with the Examiner’s assumption regarding this missing term. It is respectfully submitted that in light of this amendment, the instant rejection under 35 U.S.C. § 112 has been overcome.

2. **Response to Claim Rejections under 35 U.S.C. § 101**

Claims 1-13, 18-30 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The Examiner states that “in the present case, claims 1-13 and 18-30 only recite abstract ideas. The recited claims detailing the steps of obtaining a patient identity, associating a baseline value, summing claims and determining a monetary incentive do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.”

In response, the subject claims 1-13, and 18-30 have been amended to recite in the preamble that the elements are steps directed to a “computer-implemented method” of providing a monetary incentive, or processing claims. Therefore, the amended claims clearly and definitely require the use of the technological arts through reference to a computer, as

opposed to the mere presence of the term “automatically.” It is therefore respectfully submitted that the rejection under 35 U.S.C. § 101 has been overcome.

3. Response to Claim Rejections under 35 U.S.C. § 103

Claims 1-16, 18-24, 26-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spiro, U.S. Patent Number 5,819,228 (hereinafter “the Spiro patent”) in view of Bitran, et al, Provider Incentives and Productive Efficiency in Government Health Services document, September , 1992. URL: <http://www.phrplus.org/Pubs/hfsmar1.pdf> (hereinafter “Bitran”).

The Spiro patent is directed to a healthcare payment system that uses an intensity adjustment factor applied to healthcare provider episodes of care. The Spiro patent describes a system in which payments are provided to imaging providers (radiologists) based upon an episode of care payment methodology. A financial incentive plan is utilized in which the radiologists are encouraged to increase their interaction with referring physicians to select the best imaging studies, based upon the identified clinical conditions, to appropriately diagnose the patient. The members of a health plan fund a diagnostic imaging provider account through fixed monthly payments. The radiologist is credited with an episode of care for all imaging studies performed on a given member per period of time (e.g., two months). An intensity adjustment factor based upon the type of imaging studies performed is multiplied by the number of episodes of care. Each provider’s percentage of the total intensity adjusted episode of care is calculated monthly, and the provider is paid from the funds. Radiologists are awarded as the number of studies per episode of care declines and as the number of episodes for a given population decreases. Thus, the described episode of care payment methodology provides an incentive to the radiologists to participate in reducing inappropriate utilization and/or studies.

In the Spiro patent, the incoming data for a patient is obtained from a claim submission form, such as a HCFA standard health insurance claim form. An episode of care is defined as all imaging studies performed for a given patient within a pre-set time period for one clinical indication. (Spiro, Col. 4:55-57). Pools of money are defined and funded monthly for each type of provider within the health plan. (Spiro, Col. 5:10-15). The account

is funded based on the plan's membership and a fixed per member dollar amount. Payments from this account are disbursed to radiologists according to each radiologist's proportionate share of the total intensity adjusted episodes of care per month. (Spiro, Col. 9:15-22). In the Spiro system, the recipients of the incentive are radiologists, also referred to as "imaging providers", who are service providers providing a particular and well-defined service. The providers in Spiro are not decision-makers charged with deciding a course of treatment for a patient.

Claim 1 has been amended to recite:

1. A computer-implemented method of providing a monetary incentive, as determined by an incentive administrator, payable by a payer to a healthcare provider who decides a course of treatment for a patient with a condition during an episode of care, the method comprising the steps of:
 - evaluating the condition of the patient obtained by a diagnosis performed by the healthcare provider;
 - creating an episode of care based upon the diagnosis of the healthcare provider and a decided course of treatment;
 - associating a baseline value related to treatment of the condition to the episode of care;
 - summing a plurality of claims processed during the episode of care of the patient for the condition to obtain a total treatment cost; and
 - determining a monetary incentive to pay to the healthcare provider if the total treatment cost is less than the baseline value, wherein a portion of the monetary incentive is retained by the incentive administrator.

Claim 1, as amended, thus claims a method in which a monetary incentive is calculated by an incentive administrator to be paid by a payer to a healthcare provider who performs a diagnosis and decides a course of treatment for a patient with a condition. Claim 1 further recites a method in which a monetary incentive is paid to the healthcare provider if the total treatment cost is less than a baseline value, where a portion of the monetary incentive is retained by the incentive administrator.

The Spiro patent does not teach or suggest the payment of an incentive to a decision-maker, such as "a healthcare provider who decides a course of treatment for a patient with a condition," as recited in amended claim 1. Instead Spiro teaches the establishment of a fund, and disbursement of monthly payments from the fund to service providers, e.g., radiologists.

The service providers in Spiro simply provide a service utilized by physicians, and are not themselves responsible for diagnosing a patient and making decisions related to treatment of patients with conditions during an episode of care. Furthermore, the Spiro patent does not teach or suggest the payment of incentive funds to a healthcare provider from a payer, wherein a portion of the incentive payments are retained by the incentive provider. In Spiro, pools are defined and funded monthly for each type of service provider. The funding of each pool is based on a particular plan with a given health maintenance organization. (Spiro, Col. 5:16-18). Spiro does not teach or suggest the establishment of an incentive administrator who directs incentive payments from a funder to the healthcare provider, where a portion of the incentive payments is retained by the incentive administrator. Therefore, it is respectfully submitted that claim 1, as amended is not rendered obvious under 35 U.S.C. § 103(a) by the Spiro patent.

The Bitran paper studies the causes and inefficiencies in government-run healthcare systems in third world countries. The Bitran paper discusses the withholding of a percentage of fees from a physician until year-end, and the payment of these fees to those physicians who meet certain performance goals, and the payment of bonuses to physicians who meet certain efficiency goals, such reduction in average stay periods. The Bitran paper does not address the availability or use of targeted incentives based upon care for individual patients. Specifically, the Bitran paper does not teach or suggest the creation of an episode of care based upon the diagnosis of a healthcare provider, or the determination of a monetary incentive to pay to the provider if the total treatment cost is less than a determined baseline value. The Examiner has cited Bitran for the proposition that the establishment of baseline values to determine a monetary incentive is well known in the art. However, applicants respectfully submit that the cited passages of Bitran (i.e., pages 18, 24, and 29) do not teach or suggest the element of determining a baseline value against which to calculate a monetary incentive in the context of the payer, incentive administrator, and healthcare methodology claimed in the present application. The system described in Bitran mentions cost-containment goals, but does not teach or suggest the use of such goals in the context of a system that provides targeted and proportionate incentive payments that are individually calculated based on specific episodes of care, as claimed in the present application. The

Bitran paper, therefore, does not add any teaching or suggestion that would render the pending claims of the application obvious under 35 U.S.C. § 103(a).

Furthermore, applicants respectfully submit that it is not clear how one of ordinary skill in the art would be motivated to combine the Spiro and Bitran references. Spiro is directed to a specific system of reducing diagnostic imaging costs by rewarding radiologists who minimize unnecessary test procedures. Bitran is a field work study that looks at the causes and inefficiencies in government-run healthcare systems in third world countries. It is not clear how a patent focused on a specific incentive system directed to radiologists would be combined with a paper that addresses how inefficient healthcare bureaucracies in the developing world can adopt methods used by U.S. HMO type systems.

It is respectfully submitted that in light of the amendments made to claim 1 and the remarks provided herein, the instant claim rejection under 35 U.S.C. § 103(a) has been overcome, thus placing claim 1 in condition for allowance. Claims 2-16 depend from claim 1, and therefore, for the same reasons provided with respect to claim 1, it is respectfully submitted that claims 2-16 are allowable over the cited combination.

Claim 18 has been amended to recite elements similar to those of amended claim 1. Therefore, for the same reasons provided with respect to claim 1, it is respectfully submitted that claim 18, and its dependent claims 19-24, and 26-28 are allowable over the cited combination.

Claims 17 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Spiro, Bitran, and further in view of U.S. Patent No. 5,557,514 ("Seare"). The Examiner states that Seare teaches a method including the step of filtering to remove outlier episodes of care. It is respectfully submitted that in light of the amendments made to claims 1 and 18, from which claims 17 and 30 respectively depend, the rejection of these claims has been overcome, and thus claims 17 and 30 are in condition of allowance.

Claim 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Spiro, Bitran, and further in view of U.S. Patent No. 5,970,463 ("Cave"). The Examiner states that Cave teaches the adjustment of the baseline value for comorbidity. It is respectfully submitted that in light of the amendments made to claim 18, from which claim 25 depends, the rejection of this claim has been overcome, and thus claim 25 is in condition of allowance.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Spiro, Bitran, and further in view of Official Notice that emergency rooms are hospital rooms staffed and equipped for the treatment of persons requiring immediate medical care. It is respectfully submitted that in light of the amendments made to claim 18, from which claim 29 depends, the rejection of this claim has been overcome, and thus claim 29 is in condition of allowance.

Applicants respectfully request that the above described amendments be made part of the official record in the present application, and respectfully submit that support for the claim amendments and new claims is present in the specification, claims, and drawings as originally filed, and that no new matter has been added.

If there are any shortages, the Examiner is authorized to charge our Deposit Account Number 04-0822.

Respectfully submitted,

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